

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

TOTALLY CHOCOLATE, INC., a
Washington corporation,

Plaintiff,

v.

THE CHOCOLATE INN LTD., a New York
Corporation,

Defendant.

NO. C04-1330 RBL

**ANSWER OF THE CHOCOLATE
INN LTD.**

Comes now The Chocolate Inn Ltd., defendant herein, and answers and alleges as follows.

THE PARTIES

1. The Chocolate Inn Ltd. has insufficient knowledge or information on which to form a belief as to the truth of the matters alleged in paragraph 1 of the complaint, and therefore denies those allegations.

2. The Chocolate Inn Ltd. admits that it is a New York corporation and affirmatively alleges that its business address is 110 Buffalo Avenue, Freeport, New York, 11520.

ANSWER OF THE CHOCOLATE INN LTD.

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1 **NATURE OF ACTION AND SUBJECT MATTER JURISDICTION**

2 3. Paragraph 3 of the complaints states legal conclusions, and The Chocolate
3 Inn Ltd. therefore denies those allegations.

4 4. The Chocolate Inn Ltd. admits federal question jurisdiction, but denies
5 diversity, pendant or ancillary jurisdiction, and except as admitted, denies all other
6 allegations in paragraph 4 of the complaint.

7 **PERSONAL JURISDICTION AND VENUE**

8 5. The Chocolate Inn Ltd admits that it has done business in the Western District
9 of Washington, but denies the remaining allegations in paragraph 5 of the complaint.

10 **BACKGROUND FACTS**

11 6. The Chocolate Inn Ltd has insufficient knowledge or information to form a
12 belief as to the matters alleged in paragraph 6 of the complaint, and therefore denies those
13 allegations.

14 7. The Chocolate Inn Ltd denies the allegations in paragraphs 7 through 9 of the
15 complaint.

16 8. The Chocolate Inn Ltd admits the allegations in paragraph 10 of the
17 complaint.

18 9. The Chocolate Inn Ltd admits that it advertises and promotes its own line of
19 chocolate bars. Except as so admitted, The Chocolate Inn Ltd denies the allegations in
20 paragraphs 11 through 14 of the complaint.

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24 **ANSWER OF THE CHOCOLATE INN LTD.**

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1 **CLAIM I**
2 **FALSE DESIGNATION OF ORIGIN, FALSE REPRESENTATION AND FALSE**
3 **ADVERTISING**
4 **(FEDERAL)**

5 10. The allegations in paragraph 15 of the complaint state a legal conclusion, and
6 The Chocolate Inn Ltd therefore denies those allegations.

7 11. Answering the allegations in paragraph 16 of the complaint, The Chocolate
8 Inn Ltd realleges paragraphs 1 through 10 above.

9 12. The Chocolate Inn Ltd denies the allegations in paragraphs 17 through 21 of
10 the complaint.

11 **CLAIM II**
12 **TRADEMARK INFRINGEMENT, TRADE DRESS INFRINGEMENT,**
13 **AND UNFAIR COMPETITION (COMMON LAW)**

14 13. The allegations of paragraph 22 of the complaint state a legal conclusion, and
15 The Chocolate Inn Ltd therefore denies those allegations.

16 14. Answering the allegations in paragraph 23 of the complaint, The Chocolate
17 Inn Ltd realleges paragraphs 1 through 13 above.

18 15. The Chocolate Inn Ltd denies the allegations in paragraphs 24 through 32 of
19 the complaint.

20 **CLAIM III**
21 **COPYRIGHT INFRINGEMENT (FEDERAL LAW)**

22 16. The allegations of paragraph 33 of the complaint state a legal conclusion, and
23 The Chocolate Inn Ltd therefore denies those allegations.

1 17. Answering the allegations in paragraph 34 of the complaint, The Chocolate
2 Inn Ltd realleges paragraphs 1 through 16 above.

3 18. The Chocolate Inn Ltd denies the allegations in paragraphs 35 through 43 of
4 the complaint.

5 **CLAIM IV**

6 **UNFAIR COMPETITION AND PRACTICES (STATE)**

7 19. The allegations of paragraph 44 of the complaint state a legal conclusion, and
8 The Chocolate Inn Ltd therefore denies those allegations.

9 20. Answering the allegations in paragraph 45 of the complaint, The Chocolate
10 Inn Ltd realleges paragraphs 1 through 19 above.

11 21. The Chocolate Inn Ltd denies the allegations of paragraphs 46 and 47 of the
12 complaint.

13 22. The allegations in paragraph 48 of the complaint fail to state a claim on which
14 relief can be granted, contain immaterial, impertinent and scandalous material, and
15 should be stricken. The Chocolate Inn Ltd denies those allegations.

16 23. The Chocolate Inn Ltd denies the allegations in paragraphs 49 through 51 of
17 the complaint.

18 **AFFIRMATIVE DEFENSES**

19 24. This court lacks personal jurisdiction over the defendant.

20 25. Plaintiff has failed to state claims upon which relief can be granted.

21 26. Venue in this matter is improper.

22 27. Plaintiff's claims relate to short, stock phrases and slogans, familiar symbols
23 and designs, lettering and coloring, which are not subject to legal protection.
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25 **ANSWER OF THE CHOCOLATE INN LTD.**

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1 28. Under the circumstances of the relevant market, defendant's products cause
2 no confusion among prospective purchasers as to the origin of product.

3 **Prayer for Relief**

4 Wherefore, having fully answered the allegations in the complaint, The Chocolate
5 Inn Ltd prays for relief as follows:

- 6 a. For dismissal of the complaint, with prejudice;
7 b. For the costs in defending this suit, including attorney fees, in an amount to
8 be set by the court, pursuant to RCW 4.28.185(5).
9 c. For such other and further relief as the court may deem just and equitable in
10 the premises.

11 DATED this 11th day of August, 2004.

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13 O'BRIEN HUTSON & BOE

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15 By: 

16 Richard L. Phillips, WSBA No. 6252
17 Attorneys for Defendant
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ANSWER OF THE CHOCOLATE INN LTD.

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